PHED Committee #1
October 22, 2012

MEMORANDUM

October 18, 2012

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney
Linda McMillan, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 12-11, Accessory Apartments – Amendments

Zoning Text Amendment (ZTA) 12-11, sponsored by the District Council at the request of the Planning Board, was introduced on July 24, 2012. The ZTA would allow accessory apartments under certain conditions without a special exception.[1] It would still require a special exception approval whenever all those circumstances are not present. The Council treatment of ZTA 12-11 will guide the Planning Board in its deliberations on the Zoning Ordinance Rewrite.

The Council conducted a public hearing on September 11, 2012. There was extensive testimony, some in support and some in opposition. Some testimony recommended specific changes. There were requests for specific information; Staff hopes the October 8 packet for the Committee satisfied these requests.

On October 8, the Committee reviewed background information on current law, facts on current accessory apartments, information on current enforcement by DHCA, and the purpose of ZTA 12-11. The Committee had the benefit of hearing from the Planning Board Chair, the Acting Planning Director, the Director of DHCA, the Director of DPS, and the Executive Director of the Board of Appeals at that meeting.[2]

This packet is written to help the Committee make decisions on ZTA 12-11. It will do so without repeating all of the information in the October 8 packet. There are 4 major sections to this packet:

I ***Fundamental Decisions***
II ***Provisions for Approval without a Special Exception***
III ***Provisions for Approval with a Special Exception***
IV ***Provision for a Registered Living Unit***

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[1] Testimony indicated that, under ZTA 12-11, accessory apartments would be allowed "as of right". To the extent that a special exception would not be required, that is correct; however, a landowner must satisfy numerous conditions in order to have an accessory apartment. The Planning Board Chair would call this a use allowed by administrative review.

[2] When President Kennedy gave a dinner for all living American Nobel Prize winners, he is quoted as saying, "I think this is the most extraordinary collection of talent, of human knowledge, that has ever been gathered at the White House - with the possible exception of when Thomas Jefferson dined alone." The Committee had all the talent that it could ask for; Thomas Jefferson was unavailable when the Committee met.

I Fundamental Decisions

1) *As with any ZTA, the Council may recommend disapproval of ZTA 12-11. This would reaffirm the current special exception process without change.*

If the Committee decides that ZTA 12-11 should be disapproved, the Committee meeting on October 22 will not take long. *Staff recommends approval of ZTA 12-11 in some form and therefore does not recommend this course of action.* Whether or not the Council believes that accessory apartments should by allowed under certain circumstances without a special exception, the approval process is unreasonably long. (The Citizens' Coalition recommended a task force to advise the Council before taking action. There is concern that the enforcement of current regulations is lax and that DHCA would be overextended by any expansion. In their opinion, current penalties for illegal units are not sufficient to change behavior and the Council should have complete information on illegal units before acting. A task force is also recommended for properly assessing accessory apartments for property tax purposes.)

2) *The Council may accept the concept of allowing accessory apartments under certain conditions without a special exception.*

Staff recommends allowing accessory apartments under certain circumstances without a special exception, even if the Council wants to make the requirements more stringent than in ZTA 12-11 as introduced. As noted at the October 8 Committee meeting, approval of ZTA 12-11 will not result in significantly more apartments given the required conditions and having those required conditions in place at a house where the owner wants to become a landlord.

Despite the 2,000 unit "sunset" provision in ZTA 12-11 and the limiting licensing criteria, critics of ZTA 12-11 would argue that accessory apartments would significantly increase the number of such apartments. In addition, the lack of any notice to nearby residents of impending apartments is given as a reason to only allow new accessory apartments by special exception. Whatever the Council decides to do with regard to allowing accessory apartments without a special exception, the Council may still want to change the special exception process or requirements.

Testimony expressed the view that noticing of an impending accessory apartment was important so that neighbors could challenge any fact in application or the opinion of staff. Notice for the purpose of information is only half their request; they want notice for the purpose of challenging material in the application. DHCA, the Department that issues licenses[3], lacks the capacity to conduct hearings. The actions of DHCA are not appealable to the Board of Appeals, which has the capacity to conduct hearings.[4] If the Council believes noticing and the ability to challenge facts are critical to the success of the communities surrounding accessory apartments, then it might amend the sections of code concerning notice of licenses and the jurisdiction of the Board of Appeals. That would require separate legislation.[5]

3) *The Council may amend or simplify the current special exception requirements, even if it rejects allowing accessory apartments without a special exception.*

As introduced, ZTA 12-11 would still require special exception approval under certain circumstances. The Council may wish to accept this concept, or it may wish to continue the current process (only allow

[3] §29-16.
[4] §2-112(a).
[5] ZTA 12-11 is an action under the Regional District Act (now Article II in the Maryland Land Use Article). ZTAs are effective without the County Executive's approval. Changing Chapter 2 and Chapter 29 would require a bill to do so. These actions are beyond the Council's authority to act as the District Council.

accessory apartments by special exception approval). In either case, there may be amendments to the special exception process or requirements that may be in order. *Staff recommends reviewing the existing special exception provision in addition to allowing some units to be approved by administrative approval.*

This packet assumes that the Committee does not recommend disapproval of ZTA 12-11 and wishes to proceed with both allowing accessory apartments without a special exception and allowing an accessory apartment by special exception. It summarizes the recommendations of the Citizens' Coalition on ZTA 12-11 as applicable.[6]

II Provisions for Approval without a Special Exception

The following table indicates the differences between the current standard for an accessory apartment special exception and standards proposed by ZTA 12-11 for approval without a special exception. The most controversial elements of ZTA 12-11 concern the number of parking spaces required, excessive concentration, number of residents, entrances, and ownership requirements. Only these issues are discussed more fully after the table. The special exception standards could be changed to mirror these changes as well.

[6] See © page 28 for the full text of their recommendations.

Approval conditions	Current requirement as a special exception	Proposed condition for a license but no special exception
Limit one unit per one-family dwelling lot (non-agricultural zone)	A dwelling that must be at least 5 years old	Allowed without regard to age of the house
Part of the pre-existing principal dwelling	Allowed if the lot is less than 1 acre	No acreage distinction
Additions to existing structure	Allowed if the lot is more than 1 acre and the building existed in 1983	Allowed
Separate structure	Allowed if the lot is 2 acres or more and existing house in 1983 and for a caregiver	Allowed if the lot is 1 acre or more in RE-2, RE-2C, and RE-1, up to 1,200 square feet
Occupancy of principal house	Resident owner and family required at least 6 months per year – no room rentals except in agricultural zones	Same
Registered living units	Prohibited when an accessory apartment is approved	Same
External attributes	If there is a separate entrance, it must maintain a single-family appearance and improvements must be compatible with surrounding properties.	Entrance must be on the side or rear yard
Street Address	Must be the same as the main dwelling	Same
Development standards	Zoning classification control; minimum 6,000 square foot lot required	Same but no minimum lot size
Maximum number of people	No limit in zoning but limited by habitable space under the housing code	3
Unit size	1,200 square feet but 2,500 square feet or 50 percent of the main dwelling for an existing accessory structure	800 square feet in R-90 and R-60; 1,200 square feet in larger lot residential zones
Excessive concentration	Prohibited but determined on a case-by-case basis	300 feet from another accessory apartment on the same block face in the R-90, R-60 and RNC zones, 500 feet in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones
Parking	2 on-site spaces are required, but the requirement may be waived or increased depending upon the availability of on-street parking	1 on-site space required in addition to any required on-site place required for the main dwelling
Sunset provision	None	After the 2,000 licenses issued by DHCA, reverts back to the current special exception process.

Parking

Two off-street parking spaces are currently required for any accessory apartment, unless the Board of Appeals finds that there is adequate on-street parking. ZTA 12-11 would require one parking space in addition to the parking required for the principal dwelling. The number of off-street spaces required varies with the date the house was constructed. Houses built before 1955 are not required to have any off-street parking. A house built between 1955 and 1958 was required to have one off-street space. Houses built after 1958 were required to have 2 off-street parking spaces. Most of the public participation in accessory apartment applications was due to an alleged lack of parking in the neighborhood.

Many houses built before 1955 do not have driveways. Adding an off-street parking space would reduce the availability of on-street parking. Driveways are generally 10 feet wide. Parking for the general public is prohibited 5 feet on either side of the driveway for a total width of 20 feet.[7] The typical on-street parking space is 20 feet long. A new driveway must at least accommodate 2 vehicles if it is to add to total parking availability.

As proposed, ZTA 12-12 would not require an on-street parking survey. Such a study would determine the peak use of on-street parking and when additional on-site parking would be warranted. Alexandria and Fairfax County do not require any off-street parking for accessory apartments unless on-street parking is found to be inadequate. The adequacy of parking is determined by conducting a parking survey on the immediate street. In Alexandria, if more than 65 percent of street parking is in use, an accessory apartment must provide 1 off-street space.

The required distance between accessory apartments and parking problems are related. The greater the distance between apartments, the less any parking problem would be exacerbated by accessory apartments.

Staff recommends requiring at least 2 on-site parking spaces if no parking was required for the main dwelling. If parking was required for the main dwelling, then 1 additional parking space should be required. Staff does not agree with requiring a parking survey because on-site parking spaces would be required. (The Citizens' Coalition would recommend 4 on-site spaces in addition to prohibiting accessory apartments on streets with parking only on one side of the street and where parking is allowed on 2 sides of the street but where there is a single travel lane; they recommend a minimum 32 foot wide paving width, and a parking survey.)

Excessive concentration

Currently, the Board of Appeals must find that an accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.[8] There are no distances between special exceptions that determine when an excessive concentration would occur; it is left to the case-by-case judgment of the Board. ZTA 12-11 would remove the Board from the decision-making process and have a numeric standard to avoid an excessive concentration. Accessory apartments would have to be at least 300 feet apart in small lot zones (measured along one block face of the subject property) and 500 feet in large lot zones. It would also prohibit back-to-back apartments in all zones.

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[7] Montgomery Code §31-19. Obstructing entrances to public or private driveways.

> The parking of vehicles at any time on the public ways of the county in such a manner that any part of the vehicle so parked is within five (5) feet of either curb edge of any existing opening or hereafter established entrance to any public or private driveways or shall overlap or obstruct any existing opening or hereafter established entrance to any public or private driveways is prohibited; except, that an owner may obstruct his own private residence driveway.

[8] §59-G-2.00(c)(2).

An overconcentration of special exceptions has the potential to change the character of single-family neighborhoods. Too many accessory apartments on one block can lead to parking problems for everyone. In some parts of the County parking is in short supply, particular in pre-1958 neighborhoods with narrow streets and no off-street parking requirement. When on-street parking is in short supply, residents on both sides of the street are affected.

In addition to or instead of amending the parking requirements, the distance standards could be amended to avoid apartments on the same block, even if the other apartment is on the other side of the street. Staff recommends deleting the prohibition against back-to-back accessory apartments. (The Citizens' Coalition would recommend a 500 foot distance between apartments, including apartments on the opposite side of the street, in any zone and asked consideration of keeping accessory apartments 1,000 feet apart in R-90, R-60, and RNC zones. The Coalition also recommended a publicly searchable list of all accessory apartments.)

Maximum number of accessory apartment residents and unit size limit

ZTA 12-11 would limit the number of residents per accessory apartment to 3 people. Other jurisdictions limit the number of people when accessory apartments are allowed. In Fairfax County, accessory apartments may only have 2 people or fewer. In Washington DC, the main dwelling and the accessory apartment may have no more than 6 people total. Limiting the number of people would be an enforcement issue for DHCA, but it could be accomplished through annual self-certification. (The Citizens' Coalition recommended self-certification, particularly with regard to the owner's own occupancy, reaffirming the agreement to allow inspections, and requiring all leases have a minimum term of one year.)

Would a landlord have to displace a 3 person household if a baby joins that household? No. The Housing Code defines an occupant as "any person, over one year of age, living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit, rooming unit, or individual living unit."[9] A baby does not become an occupant until the day after the baby's first birthday. This would give the occupants time to find new accommodations.

ZTA 12-11 would limit an accessory apartment to a floor area of 800 square feet in small lot zones and 1,200 square feet in larger lot zones. (It would be anticipated that some portion of the space would not be habitable space.[10]) *If the number of people is limited, staff does not understand why the floor area of the accessory apartment should be limited as long as it is less than 50 percent of the floor area of the house.* If a basement has a floor area larger than 800 square feet, what public interest is served by having the owner partition their basement? If the Council wants to limit floor area independently in addition to a limit of 50 percent of the main building, it may wish to keep the current limit of 1,200 square feet for all property.

Side or rear entrance

Currently, if an accessory apartment has a separate entrance, it must give the appearance of a one-family house. Exactly how this would be accomplished is not specified. ZTA 12-11 is more specific by requiring an entrance either that fronts the side or the rear yard. *Staff recommends allowing an accessory apartment to use the main entrance to the house.* A separate entrance in the front of the house would still be prohibited.

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[9] Montgomery Code §26-2.

[10] Habitable space excludes any bathroom, laundry, pantry, foyer or communicating corridor, closet, recreation room, private workshop or hobby room, storage space, fallout or emergency shelter and any area with less than 5 feet of headroom. The term floor area is used instead of gross floor area. Gross floor area is a defined term that does not include cellars, but a cellar may be used for an accessory apartment if it meets fire/safety code requirements for a bedroom.

Ownership requirements

At the October 8 Committee meeting, Councilmember Leventhal asked about the requirement for a resident owner in order to have a legal accessory apartment. Currently, the owner of the property must live in the main building for at least 6 months per year in order to get approval for a special exception for an accessory apartment.[11] It is rare for the Ordinance to distinguish between owners and renters in any way. The Ordinance is indifferent to whether multi-family housing is rental apartments or a condominiums. In this instance, the Council balanced the need for more housing with the goal of maintaining the character of the neighborhood. Owners are thought to be more responsive to any nuisance that might be caused by their renter than would other renters.[12] The Council's Opinion on ZTA 83023, that first allowed accessory apartments in 1983, said:

> The (PHED) Committee felt it was essential to retain the owner-occupancy requirement in order to ensure ownership responsibility and involvement in the fulfillment of all conditions of the special exception.

Owners are not prevented from renting their homes; they would be prevented from renting both their home and an accessory apartment. In this manner, it is regulating land use, not ownership.[13] The Maryland Courts may agree or disagree. A safer way to retain the same concept would be to put the requirement in licensing standards, where the Council would be acting under its broader authority to act to protect the welfare of the community.

Staff recommends removing the ownership requirement from the Zoning Ordinance and adding the requirement to the County's licensing law, if the Council believes that resident ownership retains neighborhood character. The Council may also wish to consider removing the 6 month occupancy requirement. (The Citizens' Coalition recommended strengthening the requirement for an owner in residence by reference to IRS principle residence requirements and crosschecking administrative records such as voter registration and driver license lists. They recommend a minimum 1 year tenancy before an owner should be able to apply for an accessory apartment. In addition, they recommend homeowner education concerning the legal requirements of landlords.)

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[11] This requirement assures that the owner is not a transient visitor. A transient visitor is defined as, "A person residing in the county for any one period of time not exceeding 6 months, except that, in a bed-and-breakfast lodging, a transient visitor is a person who resides in the lodging for no longer than 2 weeks in any one visit."

[12] According to research conducted by College Park, rented single-family homes are not maintained as well as owner-occupied homes, and the stock of such homes had begun to deteriorate; Tyler v. City of College Park, 415 Md. 475 (2010). This case upheld the City's rent control ordinance, which only regulated rents in single family dwellings.

[13] A similar provision for ownership was upheld as a valid exercise of zoning in Anderson v. Provo City Corp., Supreme Court of Utah, 108 P.3d 701 (2005) and in Kasper v. Town of Brookhaven et al., Supreme Court of New York, Appellate Division, 142 A.D.2d 213 (1988) but was overturned as being beyond the scope of zoning powers in City of Wilmington v. Broadus E. Hill, III, Court of Appeals of North Carolina, 657 S.E.2d 670(2008). Maryland Courts have not ruled on accessory apartment ownership provisions. The Court of Special Appeals in Queen Anne's County v. Days Cove Reclamation Company, 713 A.2d 351 (1998) found a zoning provision that prohibited publicly zoned reclamation facilities but allowed publicly owned facilities to be beyond the scope of zoning powers under Article 66B, because it was regulating ownership rather than land use, density, and structures.

On September 3, 2003, the County Attorney wrote an opinion on the requirement that an accessory apartment could not be occupied by a family of unrelated persons. The County Attorney said in part:

> Because §59-G-2.00(a)(5)(i) violates no statute and does not impinge upon a fundamental right or burden a suspect classification, it would be subject to rational basis review, meaning that if the provision is rationally related to some legitimate public purpose, it must be upheld as applied.

The Opinion did not address ownership, but the constitutional test remains the same.

III Provisions for Approval with a Special Exception

ZTA 12-11 requires a special exception for an accessory apartment under certain circumstances:

> An attached accessory apartment special exception petition may be filed with the Board of Appeals to deviate from any permitted use standard regarding:
> (A) location of the separate entrance;
> (B) number of on-site parking spaces; or
> (C) minimum distance from any other attached or detached accessory apartment.[14]

In addition, ZTA 12-11 would require a special exception for a large accessory apartment in a small lot zones.

Testimony did not reveal any satisfaction for a 7 month process to review an accessory apartment special exception application. Proponents stressed the numerous hurdles. Opponents wanted a thorough process (notice and a hearing opportunity), but not necessarily a long process. ZTA 12-11 does not change the process and only has standards for those attributes (entrance characteristics, number of on-site parking spaces, and excessive concentration) that trigger a special exception. *Staff would recommend amending ZTA 12-11 so that all standards should match how an accessory apartment would be allowed without a special exception, other than the attribute that triggered the need for the special exception.* Staff assumes for the purpose of avoiding repetition that the Council has reviewed the standards in Section II of this memorandum.

For those attributes that would trigger a special exception, the standards are similar to current standards:

> To approve a special exception filed under Subsection (b)(1), the Board of Appeals must find, as applicable, that:
> (A) the separate entrance is located so that the appearance of a single-family dwelling is reserved;
> (B) adequate on-street parking permits fewer off-street spaces; or
> (C) when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.

These standards would replace the numeric provisions for apartments without a special exception. If the Council retains the concept that special exceptions should still be required for all accessory apartments, then the numeric requirement for on-site parking and spacing between units should be deleted. ZTA 12-11 does not require compliance with any of the other standards for approval without a special exception. *Staff recommends requiring that special exceptions comply with the standards for non-special exceptions, except for the numeric limits just noted.*

Process changes

Forest conservation

Chapter 22A requires a forest conservation plan for all property 40,000 square feet in land area or larger. This is in conformance with State law. Proof of a preliminary forest conservation plan or a waiver from Planning Staff is required with the submission of all special exception applications, including accessory apartments, without regard to the size of the property. *Staff recommends eliminating the application requirement for a natural resource inventory for accessory apartments on lots smaller than 40,000 square feet (an amendment to §59-A-4.22(a)(9)). In addition, a water quality plan should not be required whenever*

[14] §59-A-6.19(b)(1), lines 93-99.

a special exception for an accessory apartment does not require any additional impervious surface (an amendment to §59-A-4.22(a)(10)) and the property is smaller than 40,000 square feet.

Decisions by Hearing Examiner, appealable to the Board of Appeals

Currently, the Hearing Examiner must submit all accessory apartment applications to the Board of Appeals. The Board of Appeals has the authority to make the final decision. After a report and recommendation are available from the Hearing Examiner, any party has 10 days in which to schedule oral argument. The application is thereafter scheduled on the Board's Agenda. Once the Board has made its decision (about 3 weeks after the Hearing Examiner's report and recommendation are published), the Executive Director for the Board of Appeals must draft an opinion for the Board.

Staff recommends that this process be shortened by allowing the Hearing Examiner to make a final determination. The Hearing Examiner's decision may then be appealed to the Board of Appeals if a party objects to the decision.[15] In this manner, only controversial cases would be delayed.

Staff is aware that the Board of Appeal objects to this process because it reduces their authority and thus reduces the opportunities for the decision making process to reflect the wisdom of a lay body.

Reduced time between an application submittal and scheduling a hearing

Until recently, the Hearing Examiner did not schedule a hearing for about 4 months after the application was submitted. This delay was imposed to allow Planning Staff time to review the application and write its report. Through the development streamlining process, Planning Staff has accommodated the request to handle accessory apartments more quickly. Current hearings will be scheduled 3 months from the date of the application's submission.

Councilmember Elrich favors retaining the current requirement for special exceptions, with changes to make the process much more efficient. The following reflects the substance of his recommended process changes.

Timeline from the submission of an application

- Require the scheduling of all hearings for accessory apartment special exception applications within 60 days of the date the application is deemed to be complete.
- Require DHCA to inspect and report on the conditions of approval within 30 days from when the application is submitted to the Department. (Planning Staff would not be asked to review the application.)
- Require posted signage and mailed notice at least 45 days before the hearing.
- Prohibit occupancy until any required work is completed and the Department issues a license.

Post-approval requirements

- Require inspection by DHCA as complaints or code history requires, but in no event less than once every 5 years.
- Annual certification by the owner that the owner resides in the main house (and penalties for false certifications).
- In the event the license is not renewed or the licensed is not reissued for any other reason, then require the removal of appliances and gas or electric supply lines (Councilmember Elrich would have requirement for continued occupancy of the apartment; as long as the license is renewed, it would

[15] §2-112(c).

remain legal. In this regard, the Citizens' Coalition would want new buyers to deactivate the license or to immediately apply for a new license.)

IV Provisions for a Registered Living Unit

In addition to the 413 legal accessory apartments, there are 698 registered living units. A registered living unit is defined as follows:

> Registered living unit: A second dwelling unit that is part of an owner-occupied one-family detached dwelling and is:
> (a) Suitable for use as a complete living facility with provision within the facility for cooking, eating, sanitation and sleeping;
> (b) Occupied by:
> (1) No more than 2 persons related to each other by blood, marriage or adoption, at least one of whom must be a household employee of the owner-occupant of the main dwelling; or
> (2) No more than 3 persons related by blood, marriage or adopted to the owner-occupant of the main dwelling; except that one may instead be an unrelated care-giver needed to assist a senior adult, ill or disabled relative of the owner- occupant; and
> (c) Subordinate to the main dwelling.[16]

ZTA 12-11 would make the provisions for an accessory apartment closer to a registered living unit by limiting the number of occupants to 3 people and allowing the unit without a special exception under some circumstances. The major difference is that an accessory apartment may be rented, and a registered living unit may not be rented. (The Citizens' Coalition recommended annual inspection of these units, an annual

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[16] §59-A-2; see also §59-A-6.10. Registered living unit--Standards and requirements.
A registered living unit, permitted in, agricultural, one-family residential and planned unit development zones, must:
(a) be registered with and inspected by the Director, in which process:
(1) The owner must affirm, in an affidavit of compliance provided by the Director, that the registered living unit will be maintained, occupied and removed or converted to accessory apartment use, as provided by the requirements of this section.
(2) The Director may designate another County agency or department to administer and enforce the registration and inspection requirements.
(3) The Director is authorized to adopt Executive Regulations by Method 2 which may:
(i) provide for periodic inspections, including access by inspectors at reasonable times, and compliance with applicable codes;
(ii) establish procedures for initial and continuing registration of a registered living unit including provisions for removal when it is no longer being used for purposes set forth in the definition;
(iii) include such other regulations as may be necessary to carry out the intent of this Section; and
(iv) establish fees as necessary to cover the cost of administration.
(b) comply with the Housing and Building Maintenance Standards of Chapter 26 of this Code as amended;
(c) have at least one party wall in common with the main dwelling;
(d) be subordinate to the main dwelling;
(e) use the same street address as the main dwelling;
(f) have any separate entrance located so that the appearance of a one-family dwelling is preserved;
(g) not be rented for financial remuneration, except that the services of household employees or expenses shared by family members are not deemed to be rent;
(h) not be operated on the same lot or parcel as another registered living unit, an accessory apartment, a family of unrelated persons, or any other residential use for which rent is charged, except an accessory dwelling in an agricultural zone; and
(i) be removed whenever it is no longer occupied as a registered living unit unless the owner applies for and is granted a special exception for an accessory apartment in accordance with Section 59-G-2.00, or whenever the one-family detached dwelling unit in which it is located is no longer occupied by the owner.

affidavit from the unit residents to affirm that they are not paying rent, a publicly searchable database of registered living units, and a one year waiting period – during which the unit would be vacant – before a registered living unit could be converted to an accessory apartment.)

ZTA 12-11 would specifically amend the provisions for registered living units as follows:

> **59-A-6.10. Registered living unit--Standards and requirements.**
>
> A registered living unit, permitted in[,] agricultural, one-family residential, and planned unit development zones[,] must:
>
> (i) be removed whenever it is no longer occupied as a registered living unit, unless the owner applies for and is granted either a special exception or a license for an attached accessory apartment [in accordance with Section 59-G-2.00] under Section 59-G-2.00.6 or Section 59-A-6.19, or whenever the one-family detached dwelling unit in which it is located is no longer occupied by the owner.

The Council might consider having a single standard for both registered living units and accessory apartments. (The Citizens' Coalition is concerned that converting a registered living unit to an accessory apartment is far too easy. They recommended requiring the unit be vacant during the period of conversion, with at least a one-year waiting period.)

Zoning Text Amendment No.: 12-11
Concerning: Accessory Apartments – Amendments
Draft No. & Date: 1-7\17\12
Introduced:
Public Hearing:
Adopted:
Effective:
Ordinance No.:

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN MONTGOMERY COUNTY, MARYLAND

By: District Council at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise the definitions for one-family dwelling and one-family detached dwelling-unit;
- establish definitions for an attached accessory apartment and a detached accessory apartment to replace the definition for an accessory apartment;
- revise the standards and requirements for a registered living unit;
- establish standards for attached and detached accessory apartments as permitted uses;
- amend the land use table in one-family residential zones and agricultural zones to add attached and detached accessory apartments as a permitted use under certain circumstances; and
- establish special exception standards for attached and detached accessory apartments
- and generally amend all provisions concerning accessory apartments

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2	"DEFINITIONS AND INTERPRETATION."
DIVISION 59-A-6	"USES PERMITTED IN MORE THAN ONE CLASS OF ZONE."
Adding Section 59-A-6.19	"Attached accessory apartments."
Adding Section 59-A-6.20	"Detached accessory apartments."
DIVISION 59-C-1	"RESIDENTIAL ZONES, ONE-FAMILY."
Section 59-C-1.3	"Standard development."
Section 59-C-1.5	"Cluster development."

Section 59-C-1.6	"Development including moderately priced dwelling units."
DIVISION 59-C-9	"AGRICULTURAL ZONES."
Sec. 59-C-9.3	"Land uses."
Sec. 59-C-9.4	"Development standards."
DIVISION 59-G-2.	"SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS."
Sec. 59-G-2.00.	"Accessory apartment."
Adding Sec. 59-G-2.00.6	"Attached accessory apartment."
Adding Sec. 59-G-2.00.7	"Detached accessory apartment."

EXPLANATION: ***Boldface*** *indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[*Single boldface brackets****]*** *indicate that text is deleted from existing law by original text amendment.*
Double underlining indicates text that is added to the text amendment by amendment.
[[*Double boldface brackets****]]*** *indicate text that is deleted from the text amendment by amendment.*
* * * *indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

* * *

59-A-2.1. Definitions.

* * *

[Accessory apartment: A second dwelling unit that is part of an existing one-family detached dwelling, or is located in a separate existing accessory structure on the same lot as the main dwelling, with provision within the accessory apartment for cooking, eating, sanitation and sleeping. Such a dwelling unit is subordinate to the main dwelling.]

Accessory apartment, attached: A second dwelling unit that is part of a one-family detached dwelling and provides for cooking, eating, sanitation, and sleeping. An attached accessory apartment has a separate entrance and is subordinate to the principal dwelling.

Accessory apartment, detached: A second dwelling unit that is located in a separate accessory structure on the same lot as a one-family detached dwelling and provides for cooking, eating, sanitation, and sleeping. A detached accessory apartment is subordinate to the principal dwelling.

* * *

Dwelling and dwelling units:

Dwelling: A building or portion thereof arranged or designed to contain one or more dwelling units.

* * *

Dwelling, one-family: A dwelling containing not more than one dwelling unit. An accessory apartment[, if approved by special exception,] or a registered living unit may also be part of a one-family dwelling. A one-

family dwelling with either of these subordinate uses is not a two-family dwelling[,] as defined in this section.

* * *

Dwelling unit: A building or portion **[**thereof**]** of a building providing complete living facilities for not more than one family, including, at a minimum, facilities for cooking, sanitation, and sleeping.

Dwelling unit, one-family detached: A dwelling unit that is separated and detached from any other dwelling unit on all sides, except where the dwelling is modified to include an accessory apartment**[**, approved by special exception,**]** or a registered living unit.

* * *

Sec. 2. DIVISION 59-A-6 is amended as follows:

DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.

* * *

59-A-6.10. Registered living unit--Standards and requirements.

A registered living unit, permitted in**[**,**]** agricultural, one-family residential, and planned unit development zones**[**,**]** must:

* * *

(i) be removed whenever it is no longer occupied as a registered living unit, unless the owner applies for and is granted either a special exception or a license for an attached accessory apartment **[**in accordance with Section 59-G-2.00**]** under Section 59-G-2.00.6 or Section 59-A-6.19, or whenever the one-family detached dwelling unit in which it is located is no longer occupied by the owner.

* * *

Sec. 59-A-6.19 Attached accessory apartment.

(a) Where an attached accessory apartment is permitted in a zone, only one accessory apartment is permitted for each lot and it is only permitted under the following standards:

(1) the apartment was approved as a special exception before {EFFECTIVE DATE} and satisfies the conditions of the special exception approval; or

(2) the apartment is registered with the Department of Housing and Community Affairs in the same manner as a registered living unit under Subsection 59-A-6.10(a)(3); and

(A) the owner of the lot occupies a dwelling unit on the lot at least 6 months of every calendar year;

(B) the apartment has the same street address as the principal dwelling;

(C) a separate entrance is located on the side yard or rear yard;

(D) one on-site parking space is provided in addition to any required on-site parking for the principal dwelling;

(E) in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones, the attached accessory apartment is located at least 500 feet from any other attached or detached accessory apartment, measured in a straight line from side lot line to side lot line along the same block face;

(F) in the R-90, R-60, and RNC zones, the attached accessory apartment is located at least 300 feet from any other attached accessory apartment, measured in a straight line from side lot line to side lot line along the same block face;

(G) the rear lot line of the lot with the accessory apartment does not abut a lot with another accessory apartment;

(H) if the accessory apartment is limited to a floor area of 800 square feet, it must be no greater than 50% of the principal dwelling or 800 square feet, whichever is less;

(I) if the accessory apartment is limited to a floor area of 1,200 square feet, it must be no larger than 50% of the principal dwelling or 1,200 square feet, whichever is less; and

(J) the maximum number of occupants is limited to 3 persons.

(3) The accessory apartment must not be located on a lot where any of the following otherwise allowed residential uses exist: guest room for rent; boardinghouse; registered living unit; or any other rental residential use, other than an accessory dwelling in an agricultural zone.

(b) (1) An attached accessory apartment special exception petition may be filed with the Board of Appeals to deviate from any permitted use standard regarding:

(A) location of the separate entrance;

(B) number of on-site parking spaces; or

(C) minimum distance from any other attached or detached accessory apartment.

(2) To approve a special exception filed under Subsection (b)(1), the Board of Appeals must find, as applicable, that:

(A) the separate entrance is located so that the appearance of a single-family dwelling is preserved;

(B) adequate on-street parking permits fewer off-street spaces; or

(C) when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.

Sec. 59-A-6.20 Detached accessory apartment.

(a) Where a detached accessory apartment is permitted in a zone: it must be located on a lot one acre or greater in size; only one accessory apartment is permitted for each lot; and it is only permitted under the following standards:

(1) the accessory apartment was approved as a special exception before {EFFECTIVE DATE} and satisfies the conditions of the special exception approval; or

(2) the accessory apartment is registered with the Department of Housing and Community Affairs in the same manner as a registered living unit under Subsection 59-A-6.10(a)(3); and

(A) the owner of the lot occupies a dwelling unit on the lot at least 6 months of every calendar year;

(B) the apartment has the same street address as the principal dwelling;

(C) a separate entrance is located on the side yard or rear yard;

(D) one on-site parking space is provided in addition to any required on-site parking for the principal dwelling;

(E) in the RE-2, RE-2C, and RE-1 zones, the detached accessory apartment is located a minimum distance of 500 feet from any other attached or detached accessory apartment, measured in a

straight line from side property line to side property along the same block face;

(F) the rear lot line of the lot with the accessory apartment does not abut a lot with another accessory apartment;

(G) if the accessory apartment is limited to a floor area of 800 square feet, it must be no greater than 50% of the principal dwelling or 800 square feet, whichever is less;

(H) if the accessory apartment is limited to a floor area of 1,200 square feet, it must be no greater than 50% of the principal dwelling or 1,200 square feet, whichever is less;

(I) the maximum number of occupants is limited to 3 persons; and

(J) any structure built after {EFFECTIVE DATE} to be occupied as an accessory apartment must have the same minimum side yard setback requirement as the principal dwelling and a minimum rear yard setback requirement of 12 feet, unless more restrictive accessory building or structure yard setback standards are required under Section 59-C-1.326.

(3) The accessory apartment must not be located on a lot where any of the following otherwise allowed residential uses exist: guest room for rent; boardinghouse; registered living unit; or any other rental residential use, other than an accessory dwelling in an agricultural zone.

(b) (1) A detached accessory apartment special exception petition may be filed with the Board of Appeals to deviate from any permitted use standard regarding:

(A) location of the separate entrance;

(B) number of on-site parking spaces; or

(C) minimum distance from any other attached or detached accessory apartment.

(2) To approve a special exception filed under Subsection (b)(1), the Board of Appeals must find, as applicable, that:

(A) the separate entrance is located so that the appearance of a single-family dwelling is preserved;

(B) adequate on-street parking permits fewer off-street spaces; or

(C) when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.

* * *

Sec. 3. DIVISION 59-C-1 is amended as follows:

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

* * *

Sec. 59-C-1.3. Standard development.

The procedure for approval is specified in Chapter 50.

59-C-1.31. Land uses.

No use is allowed except as indicated in the following table:

-Permitted Uses. Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.

-Special Exception Uses. Uses designated by the letters "SE" may be authorized as special exceptions under Article 59-G.

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 plex	RMH 200
(a) Residential										
[Accessory apartment.[4]]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]			[SE]
Accessory apartment, attached (up to 800 square feet).[4]	P*/ SE***	P*/ SE***	P*/ SE***	P*/ SE***	P*/ SE***	P*/ SE***	P*/ SE***			P*/ SE***
Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).[4]	P*/ SE***	P*/ SE***	P*/ SE***	P*/ SE***	P*/ SE***	SE***	SE***			P*/ SE***
Accessory apartment, detached (up to 800 square feet).[4]	P**/ SE****	P**/ SE****	P**/ SE****							
Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).[4]	P**/ SE****	P**/ SE****	P**/ SE****							

183 * * *

184 [4] Not permitted in a mobile home.

185 * See Sec. 59-A-6.19. Attached accessory apartment.

186 ** See Sec. 59-A-6.20. Detached accessory apartment.

187 *** See Sec. 59-G-2.00.6. Attached accessory apartment.

188 **** See Sec. 59-G-2.00.7. Detached accessory apartment.

189 * * *

Sec. 59-C-1.5. Cluster development.

* * *

59-C-1.53. Development standards.

All requirements of the standard method of development in the respective zones, as specified in Section 59-C-1.3, apply, except as expressly modified in this section.

	RE-2C	RE-1	R-200	R-150	R-90	R-60	RMH 200
59-C-1.531. Uses Permitted. No uses shall be permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] Section 59-C-1.31.							
* * *							
[Accessory apartment.[2]]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]
Accessory apartment, attached (up to 800 square feet).[2]	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**
Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).[2]	P*/ SE**	P*/ SE**	SE**	SE**	SE**	SE**	SE**
Accessory apartment, detached (up to 800 square feet).[2]	P***/ SE****	P***/ SE****					
Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).[2]	P***/ SE****	P***/ SE****					

* * *

[2] Not permitted in a townhouse, one-family attached dwelling unit, or mobile home.

199 * See Sec. 59-A-6.19. Attached accessory apartment.

200 ** See Sec. 59-G-2.00.6. Attached accessory apartment.

201 *** See Sec. 59-A-6.20. Detached accessory apartment.

202 **** See Sec. 59-G-2.00.7. Detached accessory apartment.

203 * * *

204 **Sec. 59-C-1.6. Development including moderately priced dwelling units.**

205 * * *

206 **59-C-1.62. Development standards.**

207

	RE-2C[8]	RE-1[8]	R-200	R-150	R-90	R-60	R-40
59-C-1.621. Uses Permitted. No uses are permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] Section 59-C-1.31, [title "Land Uses,"] subject to [the provisions of article] Article 59-G.							
* * *							
Registered living unit.[3,5]	P	P	P	P	P	P	
[Accessory apartment.[3]]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	
Accessory apartment, attached (up to 800 square feet).[3]	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	P*/ SE**	
Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).[3]	P*/ SE**	SE**	SE**	SE**	SE**	SE**	
Accessory apartment, detached (up to 800 square feet).[3]	P***/ SE****	P***/ SE****					
Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).[3]	P***/ SE****	P***/ SE****					

208 * * *

209 [3] Not permitted in a townhouse, one-family attached dwelling unit, or mobile
210 home.

211 * See Sec. 59-A-6.19. Attached accessory apartment.

212 ** See Sec. 59-G-2.00.6. Attached accessory apartment.

213 *** See Sec. 59-A-6.20. Detached accessory apartment.

214 **** See Sec. 59-G-2.00.7. Detached accessory apartment.

215 * * *

216 **Sec. 4. DIVISION 59-C-9 is amended as follows:**

217 DIVISION 59-C-9. AGRICULTURAL ZONES.

218 * * *

219 **Sec. 59-C-9.3. Land uses.**

220 No use is allowed except as indicated in the following table:

221 — **Permitted uses.** Uses designated by the letter "P" are permitted on any lot in
222 the zones indicated, subject to all applicable regulations.

223 — **Special exception uses.** Uses designated by the letters "SE" may be authorized
224 as special exceptions under Article 59-G.

225

	Rural	RC	LDRC	RDT	RS	RNC	RNC/ TDR
* * *							
(e) Residential:[2]							
[Accessory apartment.[6,7]]	[SE]	[SE]	[SE]	[SE[48]]		[SE]	[SE]
Accessory dwelling.[7]	SE	SE	SE	SE[48]	SE	SE	SE
Accessory dwelling for agricultural workers.[42]				P			
Accessory apartment, attached (up to 800 square feet).[6,7]	P*/ SE**	P*/ SE**	P*/ SE**	P[48,*]/S E[48,**]		P*/ SE**	
Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet.[6,7]	P*/ SE**	P*/ SE**	P*/ SE**	P[48,*]/S E[48,**]		SE**	
Accessory apartment, detached (up to 800 square feet).[6,7]	SE***	SE***	SE***	SE[48,***]			
Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet.[6,7]	SE***	SE***	SE***	SE[48,***]			

* * *

[6] Not permitted in a mobile home.

[7] [As a special exception regulated by divisions 59-G-1 and 59-G-2, such a] An accessory dwelling unit, including an attached or detached accessory apartment, is excluded from the density calculations [set forth] in [sections] Sections 59-C-9.41[, title "Density in RDT Zone,"] and 59-C-9.6[, title "Transfer of Density-Option in RDT Zone."]. Once the property is subdivided, such a dwelling would no longer comply with [the special exception regulations or with] this exclusion. A special

exception is not required for a dwelling that was a farm tenant dwelling in existence [prior to] before June 1, 1958[, provided, that] if the dwelling meets all applicable health and safety regulations.

* * *

[48] If property is encumbered by a recorded transfer of developments rights easement, this use is prohibited. However, any building existing on October 2, 2007 may be repaired or reconstructed if the floor area of the building is not increased and the use is not changed.

* * *

[*] See Sec. 59-A-6.19. Attached accessory apartment.

[**] See Sec. 59-G-2.00.6. Attached accessory apartment.

[***] See Sec. 59-G-2.00.7. Detached accessory apartment.

* * *

Sec. 59-C-9.4. Development standards.

* * *

59-C-9.41. Density in RDT zone.

Only one one-family dwelling unit per 25 acres is permitted. (See [section] Section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

(a) A farm tenant dwelling, farm tenant mobile home, or guest house, as defined in [section] Section 59-A-2.1[, title "Definitions."].

(b) An accessory apartment or accessory dwelling regulated by the special exception provisions of Division 59-G-1 and 59-G-2 and Sections 59-A-6.19 and 59-A-6.20.

* * *

Sec. 5. DIVISION 59-G-2 is amended as follows:

DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.

The uses listed in this Division, as shown on the index table below, may be allowed as special exceptions in any zone where they are so indicated, as provided in this Article, subject to the standards and requirements in this Division and the general conditions specified in Section 59-G-1.21.

USE	**SECTION**
* * *	
Accessory apartment	G-2.00
Accessory apartment, attached	G-2.00.6
Accessory apartment, detached	G-2.00.7
* * *	

Sec. 59-G-2.00. Accessory apartment. (The standards below reflect the conditions required only for an accessory apartment approved before {EFFECTIVE DATE}.)

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

* * *

Sec. 59-G-2.00.6 Attached accessory apartment.

A special exception may be granted for an attached accessory apartment on the same lot as an existing one-family detached dwelling, subject to the special exception provisions of Division 59-G-1 and the standards and requirements of Section 59-A-6.19.

Sec. 59-G-2.00.7. Detached accessory apartment.
Where a detached accessory apartment is permitted in a zone, only one detached accessory unit is permitted for each lot and it is only permitted under the special exception provisions of Division 59-G-1 and the standards and requirements of Section 59-A-6.20.

Sec. 6. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

Sec. 7. Sunset. Sections 1-5 of ZTA 12-11 shall cease to be effective after the 2,000th accessory apartment is registered with the Department of Housing and Community Affairs.

This is a correct copy of Council action.

_____

Linda M. Lauer, Clerk of the Council

MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

September 7, 2012

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 12-11

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 12-11 at our regular meeting on September 6, 2012. By a vote of 4:1, the Planning Board recommends approval of the text amendment revising the requirements for permitting accessory apartments in the County. A majority of the Board believes that with certain quantifiable standards and conditions and unit size requirements, accessory apartments can be permitted by right in certain circumstances while continuing to protect neighborhood character. The dissenting opinion by Commissioner Presley expressed a continuing need for public input on a case by case basis. Commissioner Presley further commented that she saw no need to change the process considering its inexpensive application fee and the historical fact that most special exception applications are reviewed within a reasonable time and approved.

Currently, an accessory apartment can only be granted through approval of a special exception by the Board of Appeals. The approval process is designed to address concerns such as maintaining neighborhood character through exterior appearance, providing adequate parking and protecting against the overconcentration of accessory units in any one area.

ZTA No. 12-11 proposes to permit accessory apartments by right in certain zones based on the size of the unit and/or whether the unit is attached to or detached from the principal one-family detached house. The ZTA establishes certain standards and requirements drafted from existing, objective standards by which a special exception use is granted for an

accessory apartment. In addition, the maximum number of occupants is restricted for both the small and large accessory units. A spacing requirement has been added to the use standards to limit the number of accessory units, regardless of size, that can be constructed within a neighborhood. Last, a maximum of 2,000 accessory apartments would be permitted in the County. The majority of the Planning Board believes that ZTA No. 12-11 addresses community impact concerns while in many cases reducing the process, time and expense required to provide one particular type of affordable dwelling unit in the County. All by-right situations would require administrative reviews for adherence to written, quantifiable standards and requirements, including registration and yearly rental licensing with the Department of Housing and Community Affairs (DHCA).

Specifically, ZTA No. 12-11:

- Modifies the current accessory apartment requirements by distinguishing between an attached and detached accessory apartment, defines these terms and establishes separate requirements and standards for each.

- Allows by right, with certain standards and requirements, an attached accessory apartment with a floor area up to 1,200 square feet in the larger lot one-family residential zones (RE-2C, RE-2, RE-1, RMH-200, R-200 and R-150 zones) under standard development and in many of the agricultural zones (Rural, RC, LDRC, and RDT zones). Under cluster development, by right accessory apartments are permitted only in the RE-2C and RE-1 zones.

- Allows by right, with certain standards and requirements, an attached accessory apartment with a floor area up to 800 square feet in the R-60 and R-90 zones and in the RNC zone.

- Requires special exception approval in the R-60 and R-90 zones under standard development and in the RNC zones for an attached accessory apartment with a floor area greater than 800 square feet. Under cluster development, special exception approval is required in the RMH-200, R-200, R-150, R-90 and R-60 zones.

- Allows a detached accessory apartment by right only in the RE-2C, RE-2, and RE-1 zones and only if located on a lot one acre or greater in size.

- Does not allow a detached accessory apartment in the RMH-200, R-200, R-150, R-90, R-60 and RNC zones.

- Sets the maximum floor area for an accessory apartment at 1,200 square feet.

- Limits the number of occupants to three persons.
- Requires one off-street parking space.
- Requires that the door to the accessory unit be located on the side or rear of the home to preserve its appearance as a single-family dwelling.

The Planning Board and its staff will be available to assist the Council in the review of the proposed accessory apartment revisions.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, September 6, 2012.

Françoise M. Carrier
Chair

FC:GR/am

MCPB
Item No. 5
Date: 09-06-12

Zoning Text Amendment 12-11 Revising the Requirements for Permitting Accessory Apartments

Gregory Russ, Planner Coordinator, gregory.russ@montgomeryplanning.org, 301-495-2174
Rose Krasnow, Acting Director, rose.krasnow@montgomeryplanning.org, 301-495-4591

Completed: 08/30/12

Description

Currently, an accessory apartment requires approval of a special exception by the County Board of Appeals. Zoning Text Amendment 12-11:

- Modifies the current accessory apartment requirements by distinguishing between an attached and detached accessory apartment, defines these terms and establishes separate requirements and standards for each.
- Allows by right, as long as it meets certain standards and requirements, an attached accessory apartment with a floor area of up to 1,200 square feet under standard development in the larger lot, one-family residential zones (RE-2C, RE-2, RE-1, RMH-200, R-200 and R-150 zones) and in many of the agricultural zones (Rural, RC, LDRC, and RDT zones). Under cluster development, such by right accessory apartments would be permitted only in the RE-2C and RE-1 zones.
- Allows by right, as long as it meets certain standards and requirements, an attached accessory apartment with a floor area up to 800 square feet to be located in the R-60 and R-90 zones and in the RNC zone.
- Requires special exception approval in the R-60 and R-90 zones under standard development and in the RNC zones for an attached accessory apartment with a floor area greater than 800 square feet. Under cluster development, special exception approval is required in the RMH-200, R-200, R-150, R-90 and R-60 zones
- Allows a detached accessory apartment by right only in the RE-2C, RE-2, and RE-1 zones and only if located on a lot one acre or greater in size.
- Does not allow a detached accessory apartment in the RMH-200, R-200, R-150, R-90, R-60 and RNC zones.
- Sets the maximum floor area for an accessory apartment at 1,200 square feet.
- Limits the number of occupants in any accessory apartment to three persons.
- Requires one off-street parking space specifically for the accessory unit.
- Requires that the door to the attached accessory unit be located on the side or rear of the home to preserve its appearance as a single-family dwelling.
- Caps the number of accessory apartments in the County at 2,000.

Summary

Staff recommends approval of ZTA No. 12-11 as introduced. The ZTA as introduced reflects the recommendations transmitted by the Planning Board to the County Council in a letter dated July 9, 2012 (At its meeting dated June 21, 2012, the Planning Board voted 4:1 to transmit the accessory apartment text amendment to the County Council for introduction). Modifications by County Council staff to the Planning Board proposed draft are minor in nature and meant only to simplify, clarify and to ensure consistency.

The Planning Board conducted the first of its public hearings/worksessions on the proposed accessory apartment provisions on May 3, 2012. At that time, the Board determined that additional input from stakeholders would be beneficial. In response, the technical staff:

- Created a webpage on the topic that includes background information on the proposed accessory apartment provisions. The page also provides opportunities for citizen comments.
- Conducted two public forums in the afternoon and evening of May 21, 2012. Each meeting included a brief presentation by staff, a question-and-answer session, and additional time to interact directly with staff. **Attachment 4** depicts the general categories of questions asked during the two community meetings and staff's response to each.

Currently, an accessory apartment can only be granted through approval of a special exception by the Board of Appeals. The approval process is designed to address concerns about maintaining neighborhood character through exterior appearance, providing adequate parking and protecting against the over concentration of accessory units in any one area.

Zoning Text Amendment (ZTA) No. 12-11 proposes to permit accessory apartments by right in certain zones based on the size of the unit and/or whether the unit is attached to or detached from the principal one-family detached house. The ZTA establishes certain standards and requirements drafted from existing, objective standards by which a special exception use is granted for an accessory apartment. In addition, the maximum number of occupants is restricted for both the small and large accessory units. A spacing requirement has been added to the use standards to limit the number of accessory units, regardless of size, that can be constructed within a neighborhood. Last, as recommended by the Planning Board, a maximum of 2,000 accessory apartments would be permitted in the County. ZTA No. 12-11 attempts to reduce the processing time and expense required to provide an accessory apartment in some cases while still ensuring that community impact concerns are being addressed. All by-right situations would require adherence to written, quantifiable standards and requirements and would require registration and yearly rental licensing with the Department of Housing and Community Affairs (DHCA).

ANALYSIS

The Standards and Requirements of Sections I and II below are similar to Sections I and II of the staff reports dated May 3, 2012 and June 21, 2012- restated for the convenience of the reader.

I. Current Special Exception Use Standards for Accessory Apartments (Also See Attachment 2 Table for Quick Comparison)

For all Accessory Apartments:

- Minimum lot size 6,000 square feet; only one per lot; must be subordinate to main dwelling
- Separate entrance must preserve appearance of single-family dwelling; must have same street address
- Must not be located on a lot occupied by a family of unrelated persons
- External modifications must be compatible with the main house and surrounding properties
- Must provide adequate parking (min. 2 off-street spaces for the accessory apartment)

- Owner of lot must occupy one of the units

Attached:
- Must have one party wall in common
- Principal dwelling must be at least 5 yrs old
- Max floor area: 1,200 square feet

Detached:
- Lot of more than 1 acre, through conversion of a separate accessory structure existing on 12/2/1983
- Accessory structure built after 12/2/1983 if lot is at least 2 acres and will house a care-giver
- Max floor area: 2,500 square feet or less than 50% of the floor area of main dwelling, whichever is less and will house either a care-giver or relative.

II. ZTA 12-11 (Also See Attachment 2 Table for Quick Comparison)

ZTA 12-11 is summarized as follows:

Two Types of Accessory Units, Two Sizes for Each Unit Type

Attached Accessory Apartment (up to 800 square feet; and from 801 square feet up to 1,200 square feet)
- A second dwelling unit that is part of the principal structure of a detached house
- Has a separate entrance
- Subordinate to principal dwelling

Detached Accessory Apartment (up to 800 square feet; and from 801 square feet up to 1,200 square feet)
- A second dwelling that is located in a separate accessory structure on the same lot as the principal dwelling.
- Allowed only where the principal dwelling is a detached house
- Subordinate to principal dwelling

Use Standards for Attached Accessory and Detached Accessory Apartments

All Attached and Detached Accessory Apartments
- Only one accessory apartment per lot. Cannot be located on a lot with a registered living unit or any other rental residential use
- Must be subordinate to the principal dwelling
- Separate entrance must not be located along the front building line. Must have the same street address
- Owner of the lot must occupy one of the units at least six months each year
- One off-street parking space is required for the accessory apartment
- In the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones an accessory apartment must not be located:

    - Within 500 feet of another accessory apartment (attached or detached) measured in a straight line from side property line to side property line along the same block face; and
    - On a lot abutting the rear lot line of any property with an accessory apartment (attached or detached)
- In the R-90, R-60 and RNC zones an accessory apartment must not be located:
    - Within 300 feet of another accessory apartment (attached or detached) measured in a straight line from side property line to side property line along the same block face; and
    - On a lot abutting the rear lot line of any property with an accessory apartment (attached or detached)
- Through special exception approval, the ZTA allows deviation from any permitted use standard regarding: (1) location of the separate entrance, (2) number of on-site parking spaces, or (3) minimum distance from any other attached or detached accessory apartment if the Board finds, as applicable, that: the separate entrance is located so that the appearance of a single-family dwelling is preserved; adequate on-street parking permits fewer off-street spaces; or when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.

Smaller Accessory Apartment (up to 800 square feet)
- Floor area must not exceed 50% of the principal dwelling or 800 square feet, whichever is less
- Maximum number of occupants is 3

Larger Accessory Apartment (from 801 square feet, up to 1,200 square feet)
- Floor area must not exceed 50% of the principal dwelling or 1,200 square feet, whichever is less
- Maximum number of occupants is 3

Staff continues to believe that any potential impacts from accessory units created as a by-right use will be reduced by the additional restrictions regarding spacing, and potential impacts on surrounding neighbors will be further minimized by the reduction in size for a detached apartment (from 2,500 to 1,200 square feet) and by the limit on the number of occupants. The proposed accessory structure provisions of the text amendment (detached accessory apartment) and the existing accessory structure provisions of the Zoning Ordinance also provide protections for adjacent properties, including the limitation of detached units to larger lot developments.

As generally depicted in Attachment 2 and summarized in the "Discussion" section of this report (page 1), detached accessory apartments with a floor area up to 1,200 square feet would only be allowed by right in the RE-2, RE-2C and RE-1 zones where the minimum lot size ranges from 1 to 2 acres. Under the cluster development and Moderately-Priced Dwelling Unit (MPDU) options of these zones where the lot sizes may be less than one acre, a detached accessory apartment would be allowed by right only if located on a lot at least one acre in size.

The proposed use standards also provide an opportunity to deviate from certain permitted use standards regarding: (1) location of the separate entrance, (2) number of on-site parking spaces, or (3) the minimum distance from any other attached or detached accessory apartment if an applicant is

granted special exception approval where the Board of Appeals must make certain compatibility and impact findings.

III. Existing RLUs and Accessory Apartments (Attachment 3)

Attachment 3 provides three maps prepared by DHCA depicting existing registered living units (RLUs) and accessory apartments located in the County. Generally, they indicate that there are a total of 540 licensed RLUs and 380 active special exception accessory apartments in the County. The combined total of 920 RLUs and accessory apartments equates to only 0.5 % of the 180,356 one-family detached residential units in the County (Source: U.S. Census Bureau, 2010 American Community Survey). Table 1 also indicates that 18% of the RLUs are located within 300 feet of another RLU while 26% of the active accessory apartments in the County are located within 300 feet of another accessory apartment.

IV. Citizen Comments (Attachment 5)

Prior to introduction of ZTA No. 12-11 (during the Planning Board's public input process for the proposed accessory apartment ZTA), staff received a number of letters concerning the proposed text amendment; a majority (approximately 44 letters) either in opposition to the proposal or in opposition to removing the accessory apartment discussion from the Zoning Ordinance Rewrite Project (including letters from a number of civic and homeowners associations and the Towns of Chevy Chase and Somerset). Specific comments in opposition to the ZTA included: concerns about effects on neighborhood character caused by an over concentration of accessory units or by relaxing requirements for: the exterior appearance of the house and parking in neighborhoods consisting of homes on small lots. Comments also included concerns about enforcement related to existing legal and illegal accessory units, reduced safety of streets due to greater traffic congestion, and the potential overcrowding of schools. Some felt the accessory apartment discussions should not have been separated from the context of other changes being made through the Zoning Ordinance Rewrite project.

Staff also received letters in favor of the ZTA (including letters from The City of Takoma Park, the Coalition for Smarter Growth and the League of Women Voters). The letters in favor of the ZTA (totaling approximately 10) state that accessory apartments permitted by right under certain circumstances could: provide affordable housing options for students or for young professionals wanting to move back to the area; enhance the economic sustainability of the area by increasing the types of housing available and housing options for home ownership; facilitate aging in place of seniors who could benefit from receiving rental income; and make more efficient use of existing housing stock. Since the introduction of ZTA No. 12-11, staff has received two additional letters; one in favor and one in opposition to ZTA No. 12-11. Staff has attached these two letters to the report (Attachment 5).

Conclusion:
The current number of accessory apartments is surprisingly low. This may well be attributed to the fact that the process to obtain approval of an accessory apartment is relatively onerous. Since it is exceptionally rare for a request for an accessory apartment to be denied, there does not appear to be much benefit to the current process, particularly if steps are taken to insure that by right accessory units have to meet certain requirements and standards before they can be permitted. The legislation that is proposed goes further than the current law to ensure that there will not be an over concentration of accessory apartments in any neighborhood and limits the total number of accessory units in the county

to 2000. Staff is confident that these additional precautions ensure that allowing by right accessory units will not result in any significant impact to the character of the county's residential neighborhoods.

ATTACHMENTS

1. Zoning Text Amendment No. 12-11 as introduced
2. Accessory Apartment Comparison Table-Existing vs. ZTA No. 12-11 Provisions
3. Maps of Existing Registered Living Units and Accessory Apartments in Montgomery County
4. General Categories of Questions Discussed at May 21 Community Meetings
5. Letters from Citizens regarding ZTA No. 12-11

GR/RK/am

September 10, 2012

TO: Montgomery County Council

FROM: A Citizens' Coalition on ZTA 12-11
A coalition of civic associations and individuals for the purpose of:
- *analyzing ZTA 12-11*
- *educating residents about the details of ZTA 12-11*
- *making recommendations to improve ZTA 12-11*

RE: ZTA 12-11

Representatives of neighborhood civic associations across the County expressed their thoughts about proposed changes in the rules for accessory units at Planning Board meetings and hearings in June. The zoning text amendment before you reflects some changes as a result of those meetings.

While it may not surprise you to learn that we still have many concerns about the ZTA, we agree with planning staff on a key point: the current situation, in terms of regulations, standards, and enforcement, is in desperate need of improvement. While this ZTA is a start, we strongly believe it can – and must - be improved.

We propose that prior to passage of any changes to accessory unit statutes an advisory panel be created to work with planning staff and other County stakeholders to develop a comprehensive policy, based on documented information and with realistic enforcement capabilities, to deal with the myriad of issues around accessory units. Such a team approach will increase the likelihood that goals and concerns are fairly considered by all interested parties – civic associations, single family homeowners, advocates for affordable housing and aging in place, and others; and that what is presented to the Council accurately reflects the consensus of your constituents.

Single-family homes make up nearly 182,000 of the 364,000 homes in Montgomery County. These properties have been developed over the decades in conformity with existing master plans to provide, among many factors, housing for a range of income levels, green spaces throughout the county, and public services including schools appropriate for predicted demographics.

A consistent element in zoning changes has been respect for public input from those most likely to be impacted by any changes. Therefore, we oppose any granting of approval for accessory units "by right" in the absence of clear evidence that it is the special exception process itself, rather than building code, safety, or other mandated requirements, that makes obtaining a license for an accessory unit onerous. *We do, however, stand ready to help craft a process that would standardize the process while protecting existing neighborhoods.* We believe Montgomery County would benefit by studying how other jurisdictions locally and in other parts of the country handle the problems and issues we raise in the attached document.

Equally important, the Council must clarify the purpose of ZTA 12-11. For example, is it to increase the supply of affordable housing? Is it to provide seniors with additional income? Is it to allow homeowners in financial distress to gain extra income from their homes? These goals should be clarified before changing current code.

A coalition of civic leaders and neighborhood representatives developed the attached document to identify and explain issues of importance in ZTA 12-11 to single-family neighborhoods, and to recommend new wording or other actions to ameliorate concerns and challenges. Our suggestions, detailed in the attached document, include:

- Establishing an accurate database of existing accessory units, both legal and illegal;
- Creating enforcement mechanisms with appropriate definitions of and standards for accessory units, registered living units, and rooms for rent, including how a property owner may transition from one to another of these within a home;
- Having a mechanism for public notice and input, to protect neighborhoods and to assist over-stretched enforcement agencies and budgets;
- Ensuring adequate legal parking, both on site and on street, especially on narrow streets where parking is allowed on only one side;
- Making regulatory and enforcement actions self-financing to the greatest extent possible;
- Ensuring that both landlords and tenants are aware of their rights and responsibilities;
- Providing information up front about the costs to homeowners of adding accessory units, including the requirements to report income and how such units will affect real property assessments.

Thank you for your serious consideration of our proposals.

*Look for supporting citizens referencing **"A Citizens' Coalition on ZTA-12-11"** in their letters on accessory apartment code.*

A Citizens' Coalition on ZTA 12-11

A coalition of civic associations and individuals for the purpose of:

- *Analyzing ZTA 12-11;*
- *Educating residents about the details of ZTA 12-11;*
- *Making recommendations to improve ZTA 12-11.*

Introduction:

When Planning Staff first proposed ZTA 12-11, residential communities across the County were dismayed at the lack of public input. Subsequently, the Planning Board held public briefings and hearings, and some changes were made. Our coalition believes the changes are a step in the right direction but much more is needed.

What follows derives from our line-by-line evaluation of ZTA 12-11 and considerable discussion. The changes we propose will go further toward meeting the goal of standardizing the process for accessory apartments, while maintaining adequate protections for homeowners, renters, and communities. In each case, we identify specific issues, recommend new definitions or clearer language, and, where appropriate, direct attention to successful methods used by other jurisdictions.

Contents:

Public Notice and Public Input

Issue: ZTA 12-11 proposes to eliminate the Special Exception process and to make accessory apartments permitted uses if they meet certain criteria (at least 300 or 500 ft. from another accessory apartment, entry location, some on-site parking, and eight other requirements). Applicants who cannot meet all the "permitted use" requirements must use the current Special Exception process.

Explanation: Community input has historically been a valued and important part of the development process. It fosters the character of a neighborhood and ensures equity and fairness to all those with a stake in the community. Allowing some accessory units by right undercuts these important values and processes.

The special exception process, with its scrutiny and opportunity for hearings, also allows for verification of data supplied by applicants, in the context of mandated requirements and neighborhood concerns. For example, the applicant may not be aware of an existing apartment or other special exception uses nearby. In light of inadequate enforcement capabilities (see "Enforcement," page x), the applicant also risks a substantial investment in a unit that might not meet zoning or code criteria. The special exception hearing process may in fact make it possible for an applicant who is denied to return with a better plan.

In contrast, an administrative agency is more likely to simply check the application against a checklist, without knowing, for example, if the street involved is too narrow and already overcrowded with parked vehicles from local homeowners, The special exception hearing provides an opportunity for local conditions to be considered.

It appears that much of the delay between application and a hearing at the Board of Appeals is because the Board's docket so full and/or the applicant has not provided all required information—not because the process or administrative agencies are inherently slow. ***Because the Board of Appeals is backlogged is not sufficient reason to deny neighbors necessary rights that could have significant negative effects on them and their properties.***

Recommendation: We strongly support retention of the current special exception process for all accessory apartments. Any change to this public process must include the historical elements of notification, adequate time to evaluate and respond to an application for an accessory apartment, and clear, cost-effective means of public input. One option to consider is a fast track within the Board of Appeals, separating out accessory apartment applications from other applications for faster turnaround.

A Citizens' Coalition on ZTA 12-11
September, 2012

DEFINITIONS AND DETAILS NEEDED

Issue: Section 59-A-2.1 "Definitions" - Some definitions are not detailed enough to be clear on their meanings and several terms, as listed below, have no definitions in either the proposed ZTA 12-11 or in the Definition section of the current zoning code.

Explanation: Unclear terms may compromise the intent of the ZTA and permit conditions that are intended to be violations. Accurate and complete definitions are important for:

- Providing a factual, rational basis for requirements.
- Ensuring that everyone understands what is required.
- Enforcing compliance.
- Ensuring that owners are actually living on and managing the property in accord with relevant Local, State, and Federal laws and regulations.
- Ensuring that Registered Living Units are not used as loopholes to avoid requirements for Accessory Apartments.

Recommendations:

- Sec. 59-A-2.1, Line 8-9 and 15-17 "...provision...for cooking...."

  Terms such as "provision for cooking" and "cooking facilities" have in many respects been overtaken by technology. It is easily possible to subsist today using only microwaves, toaster ovens, hot plates, and other small electric appliances. **A better standard might be whether tenants are denied access to the homeowner's kitchen for food storage and meal preparation; no such access should result in the tenant living area being designated an accessory apartment.**

- Sec 59-A-6.10, Line 43-46 "A registered living unit...must: (i) be removed whenever it is no longer occupied as a registered living unit...or whenever the one-family detached dwelling unit...is no longer occupied by the owner."

  The language must state more clearly what constitutes removal. Among specific possibilities: demolishing any walls between the area occupied by the homeowner and the rental area; discarding cooking appliances in the rental area; demolishing the entire rental area.

- Sec 59-A-6.19, (a) (2) (G) "the rear lot line with the accessory apartment does not abut a lot with another accessory apartment"

In many neighborhoods, one property often does not abut a single property along its rear lot line; instead, it is likely to abut two. **We recommend language reading, "the rear lot line with the accessory apartment does not abut any other lot with an accessory apartment."**

- Sec 59-A-6.19, (a) (2) (F) line 75-78 "in the R-90, R-60, and RNC zones, the attached accessory apartment is located at least 300 feet from any other attached accessory apartment, measured in a straight line from side lot line to side lot line along the same block face."

  While this addresses the distance between properties for attached accessory apartments on one side of a street, **there is no language addressing similar concerns on the opposite side of the street.** In addition, although not technically a question of definition, it is puzzling that in R-60, R-90, and RNC zones, by-right accessory apartments must be only 300 feet apart, when lots in these zones are considerably smaller than in larger zones where accessory units must be 500 feet apart. In terms of population and vehicular density and crowding, it makes more sense to have a greater distance between accessory apartments in R-60, R-90, and RNC zones. **At the least, there should be a single standard of 500 feet for all zones, and the Council should consider a distance of 1000 feet in R-60, R-90, and RNC zones.**

- Sec 59-A-6.19 (b) (2) (B) and (C) "To approve a special exception...the Board of Appeals must find...adequate on-street parking permits fewer off-street spaces; or when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses including other special exception uses, in the general neighborhood of the proposed use. "

  "Adequate-on-street parking" and "excessive concentration" must be defined clearly enough, in quantifiable terms, that homeowners, whether planning or commenting on an accessory apartment, know what the standards are, and County employees and officials can appropriately inspect and enforce the standards. Parking surveys, currently performed in Arlington and Fairfax Counties, should be required here, and should include information on the conditions (season, day, time) that the survey was done, as well as the availability of off-street parking at the applicant's address.

- **Language is needed regarding transitioning an RLU into an accessory apartment.** It is far too easy for an RLU to become an accessory unit, whether legal or illegal, and there is anecdotal reporting that this occasionally occurs. An RLU should be required to remain vacant and not allowed to be rented while a license or special exception is being applied for or when the owner no longer occupies the home. In addition, a waiting

period should be required before a former RLU can be rented as an accessory apartment. **We recommend a one-year waiting period, even if the permission for a license or special exception is granted sooner.**

- **The period of time that an owner must occupy the primary living space must be clearly defined so as to be enforceable.** IRS and the State of Maryland both have standards of occupancy periods for principal residences that should apply in the case of owners of accessory apartments. The property must be the principal residence of the owner using IRS and State of Maryland standards. Referencing these guidelines in the language of the ZTA would provide a useful reminder to owners of the occupancy requirement. In addition, the guidelines, and the documentation that owners are required to supply, provide avenues for verification of occupancy.

- **There should be clear, explicit guidelines and processes to verify that the owner actually lives in the unit, and verification of owner occupancy should be required with application for new or renewed licenses.** Verification can include presentation of data by the applicant, and crosschecking of records such as voter registration and drivers license lists by DHCA, as well as inspection of the property.

A Citizens' Coalition on ZTA 12-11
September, 2012

Parking, Traffic, and Roads

Issue – On-site/Off-Street Parking: The following requirements for on-site (off-street) parking place an unrealistic burden on on-street parking, especially on internal neighborhood streets.

- Sec.59-A-6.19 (2) (D) "one on-site parking space is provided ***in addition to any required on-site parking for the principal dwelling.***" (emphasis added) ZTA 12-11 provides different standards for the number of on-site parking spaces depending on when the principal dwelling was built and reduces the number of parking spaces from the two required in the current Accessory Apartment regulations.

- Sec. 59-A-6.19 (b) (2) (B) permits fewer off-street parking spaces if there is "adequate on-street parking...spaces; or" Sec. 59-A-6.19 (b) (2) (C) "when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use." is too general and lacks enough specificity or quantifiable definition to assure adequate off-street parking and/or to deny virtually any request for reducing parking requirements.

Explanation:

- Required on-site parking requirements for the primary dwelling were different at different times. Single-family dwellings required ***no on-site parking until 1955*** when one on-site space was required. This means that an owner of a house built before 1955, about 30,000 houses in Montgomery County, would be required to provide a total of only one on-site parking space to meet requirements for an accessory apartment.

  Single-family dwellings built ***between1955 and 1958,*** about 5,000 houses, would need to provide a ***total of two on-site parking spaces***—one required by law for the principal dwelling and one for the accessory apartment.

  Single-family ***dwellings built after 1958*** are required to provide two on-site parking spaces for the principal dwelling so to qualify for an accessory apartment they would need a ***total of three on-site parking spaces.***

  There is no justification for different parking standards based on the age of the dwelling. The ZTA allows 3 people to live in an accessory apartment, each of whom may have a vehicle and in older areas where no parking or only one space is required for the principal dwelling, there may be more crowded on-street parking.

- Many internal neighborhood streets are narrow, some narrower than current requirements for secondary and tertiary streets. In addition, many narrow streets allow parking on only one side.

  In those zones where accessory apartments are 300' apart on one side of the street to qualify for "by right" approval, there is, in fact, less than 300' available for parking. With five houses in an R-60 neighborhood typically fronting 300', there may be five driveways, with apron widths of 20' each (10' for a single car driveway and 5' on each side at the curb), eliminating 100' of parking space. Vehicles may not be parked within 5' of a driveway, eliminating another 50'. There is no parking within 15' on either side of a fire hydrant. In this situation, residents are left with 120' of on-street parking availability. Most cars and SUVs today range from 15-18'; at best this allows only 7 cars to park legally at any time, within an area encompassing 10 houses, 5 on each side of the street.

- Adequate parking is critical to the success and acceptance of accessory apartments and maintaining the character of a neighborhood. On-street parking is a limited neighborhood asset that can easily become a major cause of neighborhood dissension. Neighborhood streets must not only provide parking for residents of the neighborhood, they must accommodate visitors, guests, repair trucks, snow removal, etc. Everyone in a single-family neighborhood has a stake in, and is affected by neighbors' parking.

Recommendations:

- **Property must be brought up to today's parking code for single family homes, plus the current requirement for 2 off-street spaces.** In addition, the total number of spaces should comply with other requirements of the building and zoning code regarding paved (impervious) area and lot coverage.

- **No exceptions to on-site (off-street) parking should be allowed where the paved portion of the street does not meet today's standards, where parking is permitted on only one side of the street or where one side of the street is used in lieu of a parking lot for a public facility such as a park or playground or on the first intersecting block off a primary road that allows no on-street parking.**

- **In R-60 and R-90 zones, increase the distance between accessory units to at least 500' on one side of the street**, placing these more densely built and populated areas in conformity with the standards for other residential zones.

- **Do not allow accessory units by right on any street in R-60 and R-90 zones that permits parking on only one side.**
- **Parking surveys to establish the parking capacity in a given neighborhood should be required prior to granting any permits or license for accessory apartments.** See Arlington and Fairfax Counties, both of which require parking surveys before issuing accessory apartment permits.

- There should be **clear guidelines** for:

  - Determining "adequate parking for residents"
  - Identifying other special exceptions with vehicular implications
  - The "deviation in distance separation" from the accessory apartment application
  - The definition of "the general neighborhood" for this purpose.
  - Such surveys should also attempt to identify illegal uses in residential areas that affect on-street parking availability, including illegal accessory units, and other special exceptions such as home occupations that impact parking.

Issue – Traffic Safety: ZTA 12-11 does not recognize the impact of additional traffic on safety of some neighborhood streets, particularly in older parts of the County.

Explanation:

As noted in Issue 1 above, many internal neighborhood streets are too narrow to allow parking on both sides, or, when parking is allowed on two sides, cars cannot pass each other when cars are parked on both sides and as a result one car must find a space at the curb to pull into so the other car can pass. (Secondary streets must have a paved width of at least 26' and tertiary streets 26' for two-way traffic and 20' for one-way traffic, but many older streets are narrower than these 2007 standards.) Under parking pressure with greater density, as from accessory units, it is likely that illegal parking on the non-parking side of the street will increase. This is already a problem with commercial vehicles in many neighborhoods. Such illegal parking reduces a two-way street to one driving lane, raising visibility and safety concerns, and can also make it difficult or impossible for public safety vehicles (ambulances, fire trucks) to pass.

Recommendations:

- **Do not allow accessory units on any street that permits parking on only one side or on streets that allow parking on two sides but where cars cannot pass each other in separate lanes.**

- **Permit accessory apartments only on paved streets that allow parking on both sides AND are at least 32' wide.**

Enforcement

Issue: The total number of accessory units—illegal as well as legal—is unknown.

- According to planning staff, there are over 380 active legal accessory apartments in Montgomery County today, with about 10 approved each year by the Board of Appeals under the special exception process and 540 Registered Living Units (RLUs).

  However, the Department of Housing and Community Affairs records show there are 431 legal accessory apartments and 698 Registered Living Units. The number of new apartments approved each year also appears to be understated. While that number can fluctuate from year to year, in the three-month period of March to May 2012, eight new units were approved and currently there are ten accessory apartment applications on the Board of Appeals agenda so it would appear that about 30 to 40 new units approved each year is a more realistic estimate.

- Most accessory units, whether legal or illegal, are now concentrated in the older, denser, down-county single-family residential areas.

- The ZTA proposes limits on the number of accessory units in the County but in the absence of accurate data on illegal apartments, there is no real baseline number from which to calculate limits.

Explanation:

- Without accurate data about the prevalence and location of all accessory units, it is impossible to determine whether it is appropriate to issue a license for a new accessory unit by right or by Special Exception while complying with proposed criteria in Sec. 59-A-6.19(a)(1-3); (b)(2)(C); 6.20(a)(1-3); (b)(1)(C); (2)(C). How can it be determined whether there already is an accessory unit or similar use within 300 feet on that side of the street?

- ***If the County does not know how many illegal accessory apartments exist now, how can it determine when a cap of 2,000 has been reached?***

- The existence of illegal units—and lack of any data regarding their locations and numbers, along with the lack of effort to identify them and either shut them down or bring them into compliance—further complicates efforts to fairly and safely allow and enforce a proposed increase in the number of accessory units.

- Owners of illegal units may not be reporting taxable income, and their assessed property value will be artificially low since it would not reflect the presence of an income-generating unit.

- There is no mechanism to ensure that those who buy homes with accessory units re-register the units; legality does not and should not transfer with the property.

Recommendations:

- **Determine the number of illegal accessory apartments and establish this baseline information before legislating changes that will increase the number of accessory units.** The County Council must have this information before taking action on this ZTA, and should establish an appropriate process to develop the information.

- **Devise a strategy to bring illegal accessory units into compliance or shut them down before any additional units are approved or new legislation is passed.**

- Use multiple, easily available sources to compile the number and location of illegal units, and to encourage compliance. For example:

  - Mine DHCA's list of complaints and violations as a baseline of problem addresses, and survey state and local records, such as tax records, for data that suggest the presence of accessory units.

  - Study how other jurisdictions estimate the number of illegal apartments. For example, a survey of ten real estate agents in Arlington County (VA) led to an estimate of between 930 and 1,400 unauthorized accessory dwellings there (note that Arlington, with 26 square miles and a population of about 218,000, is much smaller than Montgomery County, with 491 square miles and a population of about 990,000).

  - Access Schedule E data from the IRS and cross-reference with geographic information systems (GIS) and zoning maps to discover zoning code violations. Many counties already do this. (If the County sees accessory apartments as a potential revenue source, and develops a database to track accessory units, it could also assist State and Local authorities as well as the IRS in identifying homeowners not claiming earned income.)

  - Solicit assistance from organizations from the Greater Capital Area Association of Realtors and related industries and businesses, local citizens associations and residents, and County fire, solid waste, police and other services as partners with enforcement staff to identify illegal

accessory units and report conditions they discover while doing their work. For example, multiple satellite dishes and multiple utility boxes might also signify accessory units.

- Mount an aggressive multilingual public campaign to educate residents about the need for and their role in reporting illegal accessory apartments, noting that such units often do not meet building codes, safety, and fair housing requirements. The County should establish a separate "hotline" phone number and easy-to-remember email address for citizen complaints. Arlington County has an 8-point program including such efforts to increase effective enforcement.

- Include a time period when fines for illegal accessory units would be waived and create substantial fines for unreported apartments after the amnesty period. (Riverhead, NY waived fines for a time to encourage residents to bring units to legal status. Other local governments offer incentives to homeowners to bring illegal apartments up to minimum fire and safety requirements.)

- **Set fines for illegal accessory apartments high enough to encourage homeowners to participate in the mandated process for obtaining required permits and licenses.** Addresses that have been shut down should be re-inspected within six months to ensure that they have not restored the illegal use. If a violation is found, the fine should be doubled. A third violation should result in civil/criminal charges.

- **Require purchasers of homes containing accessory units either to deactivate the license for the unit via specific forms at closing, or to apply for legal status via specific forms at closing.**

- **Require sellers, either directly or through their agent(s), to inform prospective buyers of their obligations** re using/renting the accessory apartment as part of the offering process. Provide a form with information about such requirements that prospective buyers must sign and have it filed with the current owner's license at DHCA.

- **Establish and maintain a publicly searchable database** of addresses where accessory units are or have been active, including dates of inspections and any violations.

Issue: ZTA 12-11 does not adequately address enforcement staffing issues that are critical now and will be more critical if the number of accessory apartments increases.

Explanation:

- DPS currently has only one person in charge of accessory apartments and special exceptions. A change to by-right approvals would increase the need for pre-approval inspections. Additional staffing is crucial for adequate pre-approval enforcement, as DPS inspections are vital for life-safety issues such as escape in case of fire, as well as proper wiring and plumbing.

- DHCA is required to inspect accessory apartments annually, for continued compliance with the requirements for the special exception and for life safety and health issues. This is not currently done. To effectively maintain the standards for safe, compliant accessory units, there must be an adequate number of inspectors and a realistic and appropriate inspection schedule.

Recommendations:

- **Adequate funding must be provided to enable a cadre of trained inspectors at DPS and DHCA.**

- **Licensing and inspection fees should be adequate to cover the cost of licenses and inspections for income-generating accessory units.**

- **An annual certificate of occupancy including names of all tenants should be required.** Substantial fines should be assessed for noncompliance. If an occupancy certificate is not filed within 90 days of its due date, the license for the unit should be revoked.

- **Add a question to DPS permit application forms asking if construction is for an accessory unit.**

- **Require an annual report from DHCA** on the location and number of active and deactivated accessory units, inspections completed, violations, fees and fines collected, conversions from RLU to accessory apartment, rents charged, and other data useful for County housing analyses and reports.

Issue: The ZTA does not address either RLUs and their transformation into accessory units without the homeowner meeting accessory apartment requirements for inspections, licensing, and reporting, or the transfer of ownership of a house with an accessory apartment.

Explanation:

- There are currently 540 Registered Living Units (RLUs) in Montgomery County according to Planning Staff, 698 according to the DHCA, and an unknown number of unregistered units.

- There is currently no defined mechanism to track RLU transition to income-producing accessory units for the same owner. Nor is there a standard, enforced procedure for the re-registration of RLUs and accessory apartments when a property containing one is sold.

Recommendations:

- **Add a question to DPS building permit application forms asking if construction is for an RLU or an accessory apartment.**

- **Require sellers, either directly or through their agent(s), to notify prospective purchasers of homes containing RLUs or Accessory Apartments that they must either deactivate the license for the unit via specific forms or apply for legal status** via specific forms and that approval is not guaranteed. Provide a form with information about such requirements that prospective buyers must sign an affidavit filed with the current owner's license at DHCA.

- **Require annual inspections of RLUs** to ensure that they have not been converted to income-producing accessory units, and that safety and other standards are being met.

- **Require persons living in RLUs to sign an affidavit that they are not paying rent for the unit.**

- **Maintain and update a publicly searchable database of RLUs.**

Issue: Homeowners/landlords now often ignore with impunity official requests to inspect accessory units because they know the County must get a court or similar order to require access if a homeowner will not grant it. Homeowners and tenants may violate fire and safety code requirements, occupancy limits, and other laws.

Explanation:

Access is key to effective inspection.

Recommendations:

- **Require the owner to sign an annual affidavit of compliance as part of the license application,** restating agreement to cooperate with DHCA and other County agencies in enforcing the conditions of the license. Refusal to agree would result in denial of the application. This is the practice in Arlington, VA, and it covers inspection access.

- **Failure by the homeowner to admit an inspector within 10 days of notification of the inspection requirement should result in a violation.** Failure to admit an inspector within 30 days of the original notification should result in loss of license for the accessory unit.

- **Require at least a one-year lease, and that a copy of each annual lease must be filed with DHCA.** The lease must specify the name of each individual living in the accessory unit, and at inspection this information must be verified.

Issue: How will the County enforce the Fair Housing Law in regard to accessory apartments, as well as ensuring that landlords perform other necessary tasks?

Explanation:

- Chapter 27, Article I of the Montgomery County Code makes it illegal to discriminate in the sale or rental of commercial and residential real estate on the bases of race, sex, marital status, physical or mental disability, color, religion, national origin, ancestry, presence of children, source of income, sexual orientation and age. State and Federal laws are similar. State and Federal laws address similar concerns. Will these requirements apply to accessory units in private homes? To what extent may homeowners allow personal preferences to guide their selection of tenants?

- Allowing accessory apartments by right will increase the ease by which homeowners lacking experience as landlords and property managers can become landlords and property managers. There is no certification or training required.

- Most homeowners are not well informed about mandated landlord responsibilities that insure the safety of tenants under their roof, or compliance with housing code regulations, including safety and fire requirements. Homeowners may not be aware of the costs of building an accessory apartment or costs of upkeep. These costs include lead paint and asbestos removal requirements, safe egress, additional plumbing and heating systems, electricity upgrades, and parking requirements.

- Homeowner-landlords need to make routine repairs, keep records for taxes, screen tenants, deal with local government, and much more. Prospective landlords should assume they are taking on a part-time job– one that involves much more than just collecting rent. Homeowner's insurance and liability insurance costs are likely to increase. The

homeowner's property assessment may increase, leading to higher property taxes.

- Homeowner-landlords are subject to rules and regulations that don't apply to a single family home.

Recommendations:

- **Educate homeowners about the legal requirements they must meet as landlords,** as detailed in the Real Property Annotated Code of Maryland Title 8 and any other relevant Local, State, and Federal statues. Requirements include tenant receipts, automatic renewal provisions, security deposits, repairs, escrows, military personnel, and evictions, as well as compliance with federal and state laws regarding lead paint hazards.

- **Require homeowners to pass a course regarding fair housing and tenant relations prior to licensing an accessory unit, with refresher courses required if and when the law(s) changes.** Takoma Park has an education program to certify landlords.

- **Ensure there is adequate funding and staffing to enforce the Fair Housing Law.**

- **Develop appropriate definitions and standards to ensure that homeowners as well as tenants are safe, including specifying conditions under which a homeowner may refuse to rent an accessory unit and under which tenants may be evicted.**

- **Require a minimum one-year lease** for tenants, with all tenants named and verified at annual inspections.

- **Determine how landlord and tenant sharing a property may warrant relaxation of fair housing standards.** For example, should a senior be able to turn down a family with a child?

Issue: How will the presence of an accessory apartment affect a homeowner's real property assessment?

Explanation:

There is currently no standard process to determine whether and how much an accessory unit increases the value of a home. Nor is there a mechanism to determine whether an inactive unit should be included in a home's value.

Recommendations:

- **Create a task force or similar group to research efforts across the country to fairly determine the value added of accessory units and to recommend a formula for Montgomery County to adopt.**

- **Establish a mechanism to link the activation or deactivation of accessory units to annual property assessments.**

Issue: How will the County ensure that the homeowner is declaring and paying tax on income derived from an accessory apartment?

Explanation:

Homeowners who generate income from their property should pay all local, state and federal income taxes. The local and state income taxes can be used to offset public facilities used by the tenant, i.e., roads and schools. There is currently no accounting for income derived from illegal accessory apartments, and consequently no certainty of payment into County coffers. Conversely, identifying any homeowners who declare income from illegal accessory apartments would help identify those units.

Recommendation:

The County should explore mechanisms and procedures, in conjunction with State and Federal authorities, to facilitate identifying untaxed accessory unit income as well as the source of declared income from accessory unit rentals.

Issue: Distinctions between accessory units, RLUs, rooms for rent, rental properties, and boarding houses need to be clearly drawn and enforced.

Explanation:

- Enforcement issues are muddied by changes in technology and outdated, unclear definitions and standards. For example, "cooking facilities" at one time referred clearly to kitchens, but today cooking facilities may be quite adequate if limited to portable microwaves, toaster ovens, and hot plates.

- The primary purpose of a single-family home is to house a single family. Therefore, the homeowner should be required to live in the house for a designated period prior to and during the period of using the property to generate income via any owner-occupied process.

Recommendations:

- **Owners wishing to create accessory apartments must have owned and lived in the home for at least one year prior to application for an accessory unit.**

- **An owner must continue to live in the home while maintaining an accessory unit,** and verifying this should be part of the annual inspection process.

- **Any income-producing room(s) or unit(s) that requires tenants to prepare food in a location other than the homeowner's kitchen should be considered an accessory unit,** subject to all other requirements of accessory units.

Issue: There is no mechanism within ZTA 12-11 to track whether it actually accomplishes its aims, even though those aims are not clearly defined (for example, affordable housing, income for seniors, increased affordability of home ownership).

Explanation:

ZTA 12-11 as written would eliminate in many cases a primary neighborhood protection, public notice and opportunity to comment. Even retaining these important parts of the process, an increase of accessory apartments in established residential neighborhood will likely have unanticipated and unintended consequences. It is vital to review the initial results of the changes proposed so that if necessary, corrective steps can be taken.

Recommendation:

Designate a County agency to monitor and report back to the Council every three years on accessory apartment additions to housing inventory (affordable or otherwise), geographic distribution of the new units, data on time and costs spend in reviewing, an evaluation of whether any streamlining of the approval process has been accomplished and with what results (for applicants and for the community), and such other data as may be appropriate.